

**REMARKS**

Applicants thank the Examiner for the thorough consideration given the present application. Claims 1, 3-8, 10-12, 14-19, 21, and 22 are pending in the present application. Claims 2, 9, 13, and 20 have been cancelled. Claims 1, 3, 8, 10-12, 14-19, 21, and 22 have been amended. Claims 1 and 12 are independent claims. The Examiner is respectfully requested to reconsider the outstanding rejections in view of the above amendments and the following remarks.

***Claim for Priority***

It is gratefully acknowledged that the Examiner has recognized Applicants' claim for foreign priority. In view of the fact that Applicants' claim for foreign priority has been perfected, no additional action is required from Applicants at this time.

***Drawings***

It is gratefully acknowledged that the Examiner has accepted the Formal Drawings filed on September 29, 2005 for examination purposes.

***Sequence Listing***

Enclosed herewith in full compliance with 37 C.F.R. §§1.821-1.825 is a Sequence Listing to be inserted into the specification as indicated above. The Sequence Listing in no way introduces new matter into the specification. Also submitted herewith in full compliance with 37 C.F.R. §§1.821-1.825 is an electronic CRF copy of the Sequence Listing. The electronic CRF copy of the Sequence Listing, file "2009-06-08 1254-0294PUS1\_ST25.txt", is identical to the paper copy, except that it lacks formatting. In no way do the paper copy nor the electronic CRF copy of the Sequence Listing introduce new matter into the application.

The specification and claims are being amended to properly identify the disclosed sequences by a sequence identification number (SEQ ID NO). No new matter is introduced by these amendments.

***Rejection Under 35 U.S.C. § 112***

Claims 1-11 stand rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, as being indefinite. Particularly, the Examiner asserts that these claims “are not commensurate in scope with the preamble because it is unclear where an analysis step takes place and as such it is unclear whether the claims are directed to an analyzing method or a method of data manipulation” (Office Action at page 2).

As amended, independent claim 1 now recites, *inter alia*, the following features:

“obtaining three-dimensional data as a result of chromatography mass spectrometry for the multiple samples, wherein the three-dimensional data comprises ... a parameter indicating a retention time”;

“correcting ... the parameter indicating a retention time ... for the multiple samples”; and

“comparing ... the corrected data ... for the multiple samples to analyze differences among the multiple samples”

In view of these features, the claimed invention as recited in independent claim 1 clearly performs an analysis of samples. Thus, claim 1 is commensurate in scope with the recitation of “A sample analyzing method” in its preamble. Therefore, the Examiner is respectfully requested to reconsider and withdraw this rejection.

***Rejection Under 35 U.S.C. § 101***

Claims 1-22 stand rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. This rejection, insofar as it pertains to the presently pending claims, is respectfully traversed.

As to claims 1-11, the Examiner asserts that they are merely directed to the mental steps for correcting and comparing data. Claim 1 has been amended to recite the additional steps of “obtaining three-dimensional data as a result of chromatography mass spectrometry for the multiple samples” and “outputting a result of the comparison.” In view of these amendments, Applicants respectfully submit that claims 1-11 do not merely recite a series of mental steps but, rather, recite a statutory process under § 101.

As to claims 12-22, the Examiner asserts that these claims are directed to a computer program *per se*. Applicants point out that independent claim 12 has been amended to recite, “A computer-readable medium on which is embodied a sample analyzing program.” Thus, Applicants respectfully submit that the claims now recite an article of manufacture which is statutory under § 101, rather than a computer program *per se*.

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw this rejection.

***Rejection Under 35 U.S.C. § 102***

Claims 1-9, 11, 12, 14-20, and 22 stand rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,989,100 to Norton (hereafter “Norton”). This rejection, insofar as it pertains to the presently pending claims, is respectfully traversed.

The Examiner is respectfully directed to MPEP § 2131 which sets forth the following:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. Of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claims.” *Richardson v. Suzuki Motor Co.*, 868 F2d 1226, 1236, 9 USQP2d 1913, 1920 (Fed. Cir. 1989).

It is respectfully submitted that Norton does not set forth each and every element as defined in the claims. Thus, the Examiner’s rejection based on 35 U.S.C. § 102 has been obviated.

Specifically, independent claims 1 and 12 have been amended to recite correcting a parameter indicating a retention time using a peak of a reference material added to the multiple samples. Norton fails to teach or suggest this feature. In particular, Norton does not teach or suggest that a reference material is added to each of the multiple samples.

In rejecting dependent claim 9, the Examiner asserts that col. 4, lines 35-50, of Norton discloses that the “multiple samples comprise a reference material.” However, this portion of Norton merely teaches selecting a data set from one of the samples as a reference spectrum, to which the data sets from the other samples are time-aligned (see col. 4, lines 37-39). Even if one were to consider this as selecting one of the samples to be a “reference material,” this is entirely different than adding a reference material to each of the samples as required by the claims.

Applicants respectfully submit that Norton fails to disclose a reference material being added to each of the multiple samples on which chromatography mass spectrometry is performed, as required by the claims. Accordingly, there can be no teaching or suggestion of correcting the parameter indicating a retention time using at least one peak of such reference material as claimed. Therefore, Norton does not anticipate the claimed invention.

At least for the reasons set forth above, Applicants respectfully submit that independent claims 1 and 12 are in condition for allowance. Accordingly, claims 2-9, 11, 14-20, and 22 are allowable at least by virtue of their dependency on allowable independent claims. Therefore, the Examiner is respectfully requested to reconsider and withdraw these rejections.

#### ***Rejection Under 35 U.S.C. § 103***

Claims 10 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Norton in view of U.S. Patent No. 4,681,871 to Teschemacher et al. (hereafter “Teschemacher”). Applicants respectfully submit that Teschemacher fails to remedy the deficiencies of Norton set forth above in connection with independent claims 1 and 12. Particularly, Teschemacher is silent with regard to adding any reference material to multiple samples for the purpose of correcting a parameter indicating a retention time as claimed. Accordingly, claims 10 and 21 are allowable at

least by virtue of their dependency on claims 1 and 12, respectively. Therefore, the Examiner is respectfully requested to reconsider and withdraw this rejection.

***Conclusion***

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Jason W. Rhodes (Reg. No. 47,305) at the telephone number of the undersigned to discuss the present application in an effort to expedite prosecution.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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Attachments: Electronic CRF Copy of Sequence Listing